



SO ORDERED.

SIGNED January 03, 2006.

A handwritten signature in cursive script, reading "Gerald H. Schiff", is written over a horizontal line.

**GERALD H. SCHIFF
UNITED STATES BANKRUPTCY JUDGE**

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

IN RE:

**JOSEPH MICHAEL RUEBUSH and
MIRIAM DENISE MORGAN RUEBUSH**

CASE NO. 03-20273

Debtors

Chapter 7

MEMORANDUM RULING

Joseph Michael Ruebush and Miriam Denise Morgan Ruebush ("Debtors") filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code¹ on March 10, 2003 ("Petition Date"), and on that day an order for relief was duly entered. In due course, the Debtors received a discharge pursuant to section 727.

¹Title 11, United States Code. Citations to sections of the Bankruptcy Code will be shown as "section ____."

A civil lawsuit against Mr. Ruebush was pending on the Petition Date. Dr. Marcus L. Pittman, the plaintiff in the lawsuit, alleged that he was defamed by two of the defendants, a Doctor Rigg and Mr. Ruebush, both of whom were in the employ of the third defendant, St. Patrick Hospital of Lake Charles.

As the discharge released him from any personal liability to Dr. Pittman, Mr. Ruebush has filed a Motion for Contempt ("Motion"), primarily seeking to have this court compel Dr. Pittman to dismiss him from the lawsuit. In support of this position, Mr. Ruebush relies upon the discharge injunction contained in section 524 and jurisprudence thereunder.

Dr. Pittman, in opposition to the Motion for Contempt, acknowledges that Mr. Ruebush's discharge released him from any personal liability to Dr. Pittman, and, further, that he is enjoined by section 524 from continuing the litigation against, or seeking any recovery from, Mr. Ruebush. Dr. Pittman contends, however, that strategic considerations, particularly evidentiary in nature, require Mr. Ruebush to remain as a named defendant in the lawsuit.

The court believes that the decision in Matter of Edgeworth (Houston v. Edgeworth), 993 F.2d 51 (5th Cir. 1993), compels a denial of the Motion. In Edgeworth, relatives of a former patient sought bankruptcy court approval to bring a post-discharge medical

malpractice claim against the physician-debtor. No recovery was to be sought against the physician-debtor, as any judgment would be collected solely from his medical malpractice insurer. Reversing the bankruptcy and district courts, the Fifth Circuit permitted the suit against the physician-doctor, observing in relevant part:

. . . a discharge . . . operates as an injunction against . . . continuation of an action in other courts to collect or recover a debt as a personal liability of the debtor. 3 Collier on Bankruptcy ¶524.01, at 524-4 (15th ed.) A discharge in bankruptcy does not extinguish the debt itself, but merely releases the debtor from personal liability for the debt. Section 524(e) specifies that the debt still exists and can be collected from any other entity that might be liable. [Footnote omitted.]

In the liability context, of course, a tort plaintiff must first establish the liability of the debtor before the insurer becomes contractually obligated to make any payment. The question, then, is whether section 524(a) acts to bar such liability-fixing suits even if a plaintiff has agreed to fore swear recovery from the debtor personally and to look only to the policy proceeds.

Most courts have held that the scope of a section 524(a) injunction does not affect the liability of liability insurers and does not prevent establishing their liability by proceeding against a discharged debtor. [Footnote omitted.] . . . Section 524(a)(2) enjoins only suits "to collect, recover or offset" a debt as the "personal liability of the debtor," a phrase that has been interpreted to exclude merely nominal liability. [Citation omitted.]

993 F.2d at 53-54.

While this instant case differs from Edgeworth in that there is no liability insurer involved, at least insofar as reflected by

the record of this proceeding, Dr. Pittman has alleged the vicarious liability of St. Patrick Hospital for the tort of defamation committed by its' employee, Mr. Ruebush. In this latter respect, therefore, Edgeworth is on all fours with the instant case, for if a tort was committed by Mr. Ruebush while in the course and scope of his employment, St. Patrick Hospital has potential liability to Dr. Pittman. Recovery in that instance would be solely against the hospital, however, since Mr. Ruebush is protected by his discharge.

For the foregoing reasons, the Motion for Contempt is **DENIED**.

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